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**IN THE
COURT OF APPEALS OF INDIANA**

J.W.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 80A02-0409-JV-812
)	
STATE OF INDIANA,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE TIPTON CIRCUIT COURT
The Honorable Thomas R. Lett, Judge
Cause No. 80C01-0309-JD-034

April 13, 2005
MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant J.W. appeals the juvenile court's dispositional order committing

him to White's Residential and Family Services facility (White's facility) in Wabash following his admission to committing an offense that would have been a class C felony burglary if committed by an adult. Specifically, J.W. contends that the juvenile court failed to properly consider the statutory factors applicable to the disposition phase of the proceedings resulting in an abuse of the juvenile court's discretion. In essence, J.W. argues that probation and counseling were more reasonable alternatives in this circumstance, and that the trial court erred in committing him to a residential facility. Finding that the trial court afforded J.W. a third attempt at probation, that J.W. failed to comply with the probation terms, and that the evidence supports the trial court's determination to place J.W. at White's facility, we affirm.

FACTS¹

On June 9, 2003, fourteen-year old J.W. entered Black Widow Fireworks in Tipton through a fan in the roof of the building, broke into the cash register, took \$41 in cash, and then left the building in the same manner in which he had entered. J.W. did not have permission to enter the building.

On September 2, 2003, the State filed a delinquency petition alleging that J.W. had committed an act that would have been a class C felony burglary if committed by an adult. At a hearing held on November 5, 2003, J.W. admitted that the allegation was true. J.W. had two previous true findings for burglary, one in 1997 and one in 2002. He had been placed on

¹ We heard oral argument in this case on March 18, 2005, at Zionsville High School. We commend counsel for their able presentations. Also, we wish to thank the school administration for arranging the attendance of middle school students.

probation following both adjudications.

Also in November 2003, J.W. was expelled from Tipton Middle School for smoking marijuana on a school bus, and he began attending an alternative school. At his initial dispositional hearing, J.W. asked that the court not commit him to a residential facility, as recommended by the probation department, because he was adjusting well to the alternative school. The juvenile court took the matter under advisement for a final disposition to be determined after a period of probation in order to allow J.W. to demonstrate that he was not in need of a more structured environment.

On July 6, 2004, the trial court held a final dispositional hearing. At that hearing, J.W. admitted that he had failed a drug test during his most recent probationary period and that he would probably fail a drug test if given one on that day. During the probationary period, J.W. had been suspended briefly from the alternative school, had been apprehended for involvement in procuring ingredients for the production of methamphetamine, and admitted to shooting a BB gun near an occupied car. J.W. testified that he had not been placed outside of his home after the other two burglary adjudications and that he had spent only a few hours in secure detention. Also, the predispositional report indicated that J.W. had not previously received any mental health counseling or substance abuse counseling. There was evidence that J.W.'s father died in 2003, leaving his mother solely in charge of J.W. and his siblings.

The juvenile court determined that J.W. failed his opportunity for probation and that he needed a structured environment outside of his home. The juvenile court considered J.W.'s past probation opportunities and J.W.'s conduct during probation in the present case.

The court concluded that placement in a residential facility offered J.W. the least restrictive alternative consistent with the safety of the community and J.W.'s rehabilitation. Thus, the juvenile court committed J.W. to White's facility until such time as he could be satisfactorily released from the facility, with placement on formal probation after his release until he turns eighteen.

DISCUSSION AND DECISION

In resolving these issues, we note that Indiana Code section 31-37-18-6 sets forth the factors that juvenile courts must consider in rendering dispositional orders:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

- (1) is:
 - (A) in the least restrictive (most family like) and most appropriate setting available; and
 - (B) close to the parents' home consistent with the best interest and special needs of the child;
- (2) least interferes with family autonomy;
- (3) is least disruptive of family life;
- (4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian;
- (5) provides a reasonable opportunity for participation by the child's parent, guardian or custodian.

Juvenile courts are vested with flexibility when determining the appropriate dispositional order to impose upon juvenile delinquents. L.L. v. State, 774 N.E.2d 554, 558 (Ind. Ct. App. 2002). The choice of a specific disposition is left to the juvenile court's

discretion, subject to the above-referenced statutory factors including the welfare of the child, the safety of the community, and the clear policy of favoring the least harsh disposition. See id. at 556. A reviewing court will not reverse a juvenile court's dispositional order absent a showing of an abuse of the juvenile court's discretion. C.T.S. v. State, 781 N.E.2d 1193, 1202 (Ind. Ct. App. 2003). An abuse of discretion occurs when a court's decision is clearly erroneous and against the logic and effect of the facts and circumstances before the court.

Here, J.W. urges that other measures could have been employed, such as mental health and substance-abuse counseling in lieu of the order placing him at White's facility. He asserts that the residential facility would not be the least restrictive setting available, and that the court failed to consider his request to remain at home. In essence, J.W. urges that the juvenile court did not explore all alternatives available and consistent with the purpose of the juvenile code before placing him at a residential facility outside of the county in which he resides.

Here, the transcript of the dispositional hearing held on January 30, 2004, reveals that the juvenile court was disinclined to place J.W. on probation because of his history of failing to benefit from probation and continued illicit conduct. Counsel for J.W. urged:

Perhaps to further get his attention he needs to spend a little time at Kinsey [the local facility] as an alternative [to] going away to White's for a long period of time. Getting involved in a lot of costs and expense with that, Judge. So we would propose a fifteen or thirty day sentence at Kinsey Youth Center and then that he be placed back on probation till he's eighteen with the understanding that he has a long term placement hanging over this head if he so much as just spits on the sidewalk, if you will, Your Honor. Thank you.

Tr. p. 28-29.

The juvenile court recognized the probation department's recommendation that J.W. be placed at White's Residential and Family Services facility and then placed on formal probation until his eighteenth birthday. The juvenile court expressed its reluctance to eschew the probation department's recommendation, and it noted that its failure to make that placement could be a mistake given that J.W. had victimized others through three burglaries, and had been suspended from Tipton Middle School. In the end, the juvenile court stated:

So if I don't send you to White's today I would be taking a big chance and I would be putting a lot of weight on your shoulders and a lot of trust in you to think that maybe you would take advantage of an opportunity and that you would keep your word and that you would continue showing some of the progress that you have shown in the last few months here.

Tr. p. 31. Upon questioning by the juvenile court, J.W. confirmed that he might benefit from counseling. The juvenile court stated: "I'm requesting the probation department to look into [a] possible facility for that." Tr. p. 33. The juvenile court then continued J.W.'s probation and the dispositional hearing in order to make another assessment of J.W.'s progress.

It is evident that the juvenile court, in fact, explored alternatives and ordered an alternative to J.W.'s placement at White's facility. The record, however, demonstrates that J.W. did not follow through on his good behavior at the alternative school and continued to engage in unlawful and dangerous conduct. The evidence discloses that the juvenile court's dispositional order placing J.W. at White's facility comported with Indiana Code section 31-37-18-6, and was made after offering J.W. an opportunity to avoid the placement on the terms suggested by his counsel. See D.J. v. State, 798 N.E.2d 535, 536-37 (Ind. Ct. App. 2003) (holding that juvenile's refusal to obey his mother, unexcused absences from school,

and threatened violence constituted sufficient evidence that juvenile needed the structure and accountability provided in a secure facility).

Having said that, the record indicates and J.W.'s counsel suggests that J.W.'s conduct appears to have an underlying component attributable to substance abuse. At the time of the final dispositional hearing in July 2004, J.W. acknowledged that he had used marijuana at age eleven, had failed a drug test during his extended probation period, and that, in all likelihood, he would have failed a drug test if it were given at the time of the final dispositional hearing. Although we are sympathetic to J.W.'s argument that he was not given mental health and/or substance abuse counseling prior to his commitment to White's facility, the record reflects that the juvenile court requested that the probation department investigate an appropriate facility that offered such services. At oral argument, counsel acknowledged that White's facility meets those needs. The evidence presented at the final dispositional hearing disclosed that less restrictive alternatives had been exhausted.

In sum, it is apparent that the juvenile court properly assessed the factors and determined that J.W.'s failure to respond to less restrictive alternatives demonstrated that the commitment to the residential facility was the least restrictive option that was likely to rehabilitate J.W., while also protecting society from J.W.'s illicit conduct. In light of the above, we cannot say that the juvenile court's determination and placement of J.W. is clearly against the logic and effect of the facts of circumstances before the court.

The judgment of the juvenile court is affirmed.

SULLIVAN, J., and CRONE, J., concur.